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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/888,004

Applicant(s)

PITTELLI, PATRICK

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/11/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-10,13-17 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-10,13-17 and 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final office action in response to communications received 03/11/05. Claims 1, 9, 10, 13, 17, 22, 24, 26, and 27 have been amended. Claims 11 and 12 have been canceled. Claims 1-5, 7-10, 13-17, and 20-27 are pending in this application.

Response to Amendment

2. Applicant's amendments to claims 1 and 27 are not sufficient to overcome the 35 USC § 101 rejections set forth in the previous office action because the references to using a computer in the claims are mere trivial recitations, which are unclear as to how the computers are used to perform the limitations. For example, claim 1 has now been amended to recite that user input is received "at a CPU", without a recitation that this data is functionally used and manipulated in the rest of the claim, and thus the data may be merely collected and stored. Examiner points out that there is no recitation that the data received at the CPU is used and manipulated by the computer to perform the determination (i.e. the data may be received at the CPU and then merely viewed by a person who performs the computation). Examiner reminds the Applicant that the use of computer/technology in the claims should be of more consequence to the overall process. Accordingly, the 35 U.S.C. 101 technological arts rejection of claims 1-5, 7-8, and 27 have been maintained.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-5, 7-8, and 27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a test of whether the invention is within the technological arts. For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e. the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

In the present case, the recited process must somehow apply, involve, use, or advance the technological arts. None of the steps in the body of claim 1 contain a practical application and use of technology. The only recitation of a computer element is in element 1 of claim 1, wherein user input is received at a CPU. However, there is no recitation that this data is functionally used and manipulated in the rest of the claim, and thus the data may be merely collected and stored. Examiner points out that there is no recitation that the data received at the CPU is used and manipulated by the computer to perform the determination (i.e. the data may be received at the CPU and then merely viewed by a person who performs this computation in his or her mind). Examiner reminds the Applicant that the use of computer/technology in the claims should be of more consequence to the overall process. The remaining steps of claim 1 do not involve or employ any technology, as the steps of determining, identifying, and providing of the claim can be performed manually and without the use of any technology. Independent claim 27 and dependent claims 2-5 and 7-8 contain the same deficiencies. Therefore, it is respectfully submitted that the claimed invention is directed towards non-statutory subject matter.

As to the technological arts recited in the specification and the preamble, mere recitation in the specification and preamble or mere implication of employing a machine or article of

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manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise nonstatutory claim unless there is positive recitation in the body of the claims. In the present case, claim 1 recites “a computer implemented method” in the preamble. However, with no recitation of any functional implementation of technology in the body of the claim, the mere implication of computer implementation in the preamble does not specifically confer active implementation of technology on any of the limitations of the claim. Furthermore, claim 27 contains no recitation, in the body or preamble, of any functional use of technology. Therefore, it is respectfully submitted that claims 1-5, 7-8, and 27 are directed towards non-statutory subject matter.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-9, 11-17, and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chacker (U.S. 6,578,008) in view of Riffage.com. The following references disclose aspects of Riffage.com:

- i. Article “Curtain closes for Riffage.com” by Lee (referred to as reference A).
- ii. Article “Riffage.com picks up indie record label” by Borland (referred to as reference B).

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iii. Article "Bands and fans rub elbows on Riffage.com" by McIntosh (referred to as reference C).

iv. Screenshot of Riffage.com, dated 10/12/1999, (referred to as reference D).

6. As per claim 1, Chacker teaches a computer-implemented method for determining the market demand for an artist comprising:

receiving at a CPU user input to determine which artist to select from a pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

determining the market demand for each said selected artist based on users contributing money to a separate fund for each artist (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discuss determining the market demand for an artist based on consumers support and contribution to a virtual fund of an artist);

identifying artists that attain a predefined money level of user contributions (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discusses identifying artists that attain the highest level of support from the consumers (by way of stocks purchased) and offering these artists recording contracts); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

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(a) a refund of their money contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See column 7, lines 1-25 and 58-67, column 8, lines 1-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist). However, Chacker does not expressly disclose that the funds come directly from the users contributions or that the fund, minus a commission, is provided for the benefit of each artist that attains the predefined money level of user contributions.

Riffage.com discloses making available to each artist attaining a level of user contribution funds, minus a commission, from the user's contribution to the artist to produce and commercialize the artist (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are signed and given funding. Chacker also discloses the systems ability for

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billing with real money in column 12, lines 40-55. Riffage.com discloses receiving financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to accept non-virtual financial contributions from users in Chacker and provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker.

7. As per 2, Chacker teaches a method wherein said user input is in the form of user votes (See at least column 7, lines 1-25, wherein the users vote).

8. As per claim 3, Chacker discloses a method wherein users contribute to an artist who may attain a predefined level of user contributions, wherein users can earn prizes for contributing the artists, and wherein a user who contributes to an artist who attains a predefined level of user contributions is given an artist profile with a digital download (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20 and 35-40, wherein users contribute to an artist and when the artist attains a predefined level of contributions, the users who contributed receive an email concerning the artist). However, Chacker and Riffage.com do not expressly disclose supplying these users with a recognition certificate regarding said artist.

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker further discloses the importance of making the users of the system feel like part of a community and increase the fun and enjoyment of the system by providing users with the opportunity for prizes as well as the

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opportunity to launch a new band. See at least column 8, lines 15-30 and 55-67, and column 9, lines 1-10 and 49-60. Providing incentives to participate, such as prizes and gimmicks, is well known in the marketing and sales industry. Therefore, it would be one of ordinary skill in the art at the time of the invention to provide the users of Chacker a recognition certificate regarding an artist in order to increase user participation by creating a more community oriented tool and by providing incentives, as is taught in the prior art and known in the art.

9. As per claim 4, Chacker discloses a method wherein users contribute to funds of artists and further comprising making available to each artist attaining a predefined money level of user contribution funds to produce and commercialize the artist (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system). However, Chacker does not expressly disclose that the funds come directly from the users contributions.

Riffage.com discloses a method further comprising making available to each artist attaining a level of user contribution funds from the user's contribution to the artist to produce and commercialize the artist (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are afforded record contracts the same users would buy the cds and recordings of the artists. Chacker discusses the importance of knowing the popularity of an artist before

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signing said artist so that the system will be able to make money by said artist in at least column 8, lines 1-30, and the importance of reducing costs. Riffage.com discloses receiving non-virtual financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to require non-virtual financial input upfront in Chacker and provide this money to the artist in order to reduce the financial risk of signing an artist by proving the financial viability of an artist's popularity upfront before investing the money.

10. As per claim 5, Chacker teaches comprising using said funds to produce a record from said funds when said artist is a musician (See column 7, lines 25-55, and column 9, lines 19-45).

11. As per claim 7, Chacker discloses a method further comprising maintaining information on said users, and using said information to market said artist (See at least figure 5, column 9, lines 35-40, and column 13, lines 29-45, wherein a user logs in and retrieves his/her information and wherein the user's email address is used to market an artist).

12. As per claim 8, Chacker discloses limiting the number of user permitted to contribute to said artist (See at least figure 5, wherein users must be registered with the system in order to contribute). However, Chacker and Riffage.com do not expressly disclose limiting the users to a predefined number.

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discusses determining each artist's popularity through the user interaction with said artist. It is well known in marketing to use controls when taking market measurements (penetration, demand, etc.), such as using a defined sample group or a defined time period in order to have a standard for efficient

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comparison. Furthermore, it is well known that voting needs to be limited by some condition in order for a contest to end and the results to be tabulated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to limit the number of users interacting with the system of Chacker when determining the leading unsigned artists in order to more accurately choose the best artists by establishing standards and measurable quantities to be used in making a judgment.

13. Claims 9 and 10 are substantially similar to claim 1 and are therefore rejected using the same art and rationale above.

14. As per claim 13, Chacker discloses a method further comprising returning the selected artist to the pool of artists if the selected artist fails to meet the certain level (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the selected artist is returned to the pool if the artist does not reach the predefined level of support as dictated by the A&R of the system).

15. As per claim 14, Chacker discloses a method wherein selecting an artist to be eligible for financial support is based on the artist who attains the largest number of user votes (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected for a recording contract based on attaining the largest number of votes).

16. As per claim 15, Chacker teaches a method wherein selecting an artist to be eligible for financial support is determined by a panel of individuals (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67,

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and column 9, lines 1-20, wherein the artist is selected for financial support based upon the panel of individuals initially reviewing the artist).

17. As per claim 16, Chacker teaches a method wherein selecting an artist to be eligible for financial support is determined in part by a panel of individuals and in part by user votes (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected for a recording contract and financial support based upon the panel of individuals initially reviewing the artist along with the panel of users of the tool).

18. Claim 17 recites equivalent limitations to claim 1 and is therefore rejected using the same art and rationale above. Chacker further discloses a file server that receives and stores a sample of the artist work (See figure 6, column 5, lines 15-35 and 65-67, and column 6, lines 1-10 and 60-67, wherein the sample is received and stored).

19. As per claim 20, Chacker discloses a system comprising instructions for selecting artists from a pool of artists using inputs from a panel of individuals (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected based upon the panel of individuals initially reviewing the artist).

20. As per claim 21, Chacker teaches a method wherein the number of artists that can be selected to receive financial support from the pool of artists is predefined (See column 8, lines 60-67, wherein the number of artists is at least 50).

21. As per claim 22, Chacker discloses a system for presenting artists to determine market demand for artists comprising a computer having instructions for implementing the method of:

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receiving and storing work of artists on a file server (See at least column 5, lines 50-60, column 6, lines 55-67, column 6, lines 1-10 and 60-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 15-35 and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

dividing said work into categories (See at least figure 6 and column 12, lines 40-45, wherein a genre is defined for the works);

selecting said work from said categories (See at least figure 6 and column 12, lines 40-45, wherein a work is selected from the categories using the links);

elevating selected works into positions that are eligible to receive direct financial support from users, wherein the financial support is money (See column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected by users as eligible for financial contributions for said user);

promoting the artists who receive a predefined amount of direct financial contributions (See at least column 9, lines 10-50, wherein the artist are promoted); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67,

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column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor sells shares and leaves the monies as a balance in a portfolio, the monies not yet associated with an artist). However, Chacker does not expressly disclose that the financial contributions come directly from the users contributions or that the financial contributions, minus a commission, is provided for the benefit of each artist that attains the predefined money level of user contributions.

Riffage.com discloses providing the financial contribution, minus a commission paid to the manager of the system, for the benefit of the artist in response to the artists receiving a predefined amount of direct financial contributions (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are signed and given funding. Chacker also discloses the systems ability for billing with real money in column 12, lines 40-55. Riffage.com discloses receiving financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to accept non-virtual financial contributions from users in Chacker and

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provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker.

22. As per claim 23, Chacker discloses instructions for limiting the number of positions available to receive financial contributions from users (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist positions in the system are limited by a pre-selection process which narrows the number of artists that move into the voting portion of the system).

23. Claim 24 recites equivalent limitations to claim 1 and is therefore rejected using the same art and rationale above

24. As per claim 25, Chacker teaches an article wherein users select and contribute to an artist through a network connection (See at least figures 2 and 4, which disclose a network).

25. As per claim 26, Chacker discloses a computer-implemented apparatus for determining market demand for an artist comprising:

means for receiving and storing works of artists (See at least figure 6, column 5, lines 15-35 and 65-67, and column 6, lines 1-10 and 60-67, wherein the sample is received and stored);

means for enabling users to access the stored works (See at least figures 2 and 4, which disclose enabling users to access the stored works);

means for receiving user input to elevate artist from the general artist pool (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

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means for making elevated artists eligible for financial contributions from users, wherein the financial contributions are money (See column 5, lines 15-35 and 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-25, and 55-67, and column 9, lines 1-20, wherein selected works are in a position that is eligible to receive financial support from users);

means for making financial amounts of the system available to artists in response to the financial contributions reaching a certain level of contributions (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system);

means for providing users who contributed to artists that did not attain the level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

However, Chacker does not expressly disclose that the financial amounts available to the artist come directly from the users contributions.

Riffage.com disclose means for making financial contributions of users available to artists that meet predefined criteria (See reference C, page 1, sections 2, 3, and 4, and page 2, sections 1 and 2, wherein financial contributions are made available to artists that bring in money and are registered with the system. When an artist reaches a predefined level of support from users he/she is automatically sent to a recording label representative. See reference B, section 4).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are signed and given funding. Chacker also discloses the systems ability for billing with real money in column 12, lines 40-55. Riffage.com discloses receiving financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to accept non-virtual financial contributions from users in Chacker and provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker.

26. Claim 27 recites equivalent limitations to claim 1 and is therefore rejected using the same art and rationale above.

Response to Arguments

27. Applicant's arguments with regards to the 35 USC § 102 rejection of claim 10 based on Chacker (U.S. 6,578,008) have been considered, but are moot based on the new grounds of rejection established

28. Applicant's arguments with regards to Chacker and Riffage.com (articles i-iii, listed above) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (1) Chacker does not teach or suggest establishing a fund of user contributions for an artist, (2) Chacker does not teach or suggest providing a fund of user contributions to an artist in response to a certain level of contributions being made since there is no disclosure that the money invested in its stocks would ever be provided to the artist, and that (3) Riffage.com does not teach or suggest providing a fund to an artist in response to the fund attaining a certain level of user contributions.

In response to argument (1), Examiner respectfully disagrees. A fund is defined as a sum of money or other resources whose principal or interest is set apart for a specific objective (See Merriam-Webster.com). The claims recite that the fund is used to determine the market demand for each said selected artist based on users contributing money to the established fund for each artist. As discussed previously, Chacker teaches establishing a fund, or a place that virtual money can be donated to an artist, and users contributing to an unsigned artist through the use of this fund and virtual money, wherein money is defined as a medium of exchange, a means of payment, or a measure of value. The amount of virtual money that is specifically allocated in the system (or set aside) for a specific artist is used to gauge interest in an artist. Therefore, the virtual money and fund of Chacker meet the limitations of the claims in the broadest reasonable

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interpretation. See column 6, line 55-column 7, line 25, column 7, line 58-column 8, line 25, column 8, line 55-column 9, line 20, wherein the users of the system place money in funds of an artist to show support for said artist.

In response to argument (2), Examiner reminds the applicant that this limitation has been addressed above in a 35 USC § 103 rejection. Chacker et al. discloses that when an artist attains a predefined level of market demand (i.e. highest prices) in the system, the artist is afforded a contract. Examiner admits that in Chacker, the money values contributed to an artist are virtual, and therefore the money from the contributions is not what is directly provided to the user. In Chacker, there is a middle step where the market demand displayed by the virtual money contributed to an artist is translated by a third party (a representative) into the real money that is doled out to the artist. Examiner has relied on Riffage.com to teach making available to each artist attaining user contributions, money directly from this contribution fund, minus a commission. See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, wherein Riffage.com discloses that revenue would be drawn for an artist directly from money contributed to the artist by users of the website. Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time of the invention to accept non-virtual financial contributions from users in Chacker and provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker. Examiner points out that the system of Chacker is capable of billing with real money, as shown in column 12, lines 40-55.

In response to argument (3), Examiner points out that Riffage.com was relied upon in the 35 USC § 103 rejection to teach making available to each artist that attains user contributions,

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money directly from these contributions, minus a commission paid to Riffage.com. See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4. As stated explicitly in the rejections and also in the response to argument (2) above, Chacker was relied upon to teach an artist reaching a certain level of user contributions. Riffage.com was relied to teach, in general, the idea that if an unsigned artist of the system attains any level of user contributions via the website, that artist is entitled to the money of the fund, minus a commission. See above, for example in claim 1, wherein the examiner has specifically stated "Riffage.com discloses making available to each artist attaining a level of user contribution funds, minus a commission, from the user's contribution to the artist".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bvd

May 26, 2005



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